

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

IRON MOUNTAIN RECORDS MANAGEMENT

Employer¹

and

TRUCK DRIVERS UNION LOCAL #170, a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

Case 1-RC-21860

DECISION AND DIRECTION OF ELECTION²

The Petitioner seeks a unit consisting of the Employer's full-time and regular part-time couriers, assistant couriers, and record center specialists employed at both its Northborough and Franklin, Massachusetts locations.³ The Employer maintains that such

¹ The name of the Employer appears as amended at hearing.

² Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ By "couriers," both parties intend to refer to both CDL (commercial driver's license) drivers and non-CDL drivers. They further agree that any unit determination should exclude data entry employees, maintenance employees, customer service employees, office clerical employees, confidential employees, management employees, guards, and supervisors as defined in the Act.

a multi-location unit is not appropriate, but does not dispute that single-location units of these employees would be appropriate. The Employer contends that its record center coordinators and transportation coordinators employed at these two locations should be included in their respective location's unit. The Petitioner believes that these employees should be excluded from whatever unit or units are found appropriate because they are supervisors, but agrees that if they are not supervisors they should be included. I conclude that the Employer's contentions with respect to both the unit-scope and supervisory issues are correct, and, therefore, I find Northborough and Franklin are separate single location units and the record center coordinators and transportation coordinators are non-supervisory employees included in the units.

The Employer, which operates globally, is engaged in the provision of records storage services. Its Northborough and Franklin facilities are part of its Boston District, which also includes 11 other facilities.⁴ All 13 of these facilities are record centers where the hardcopy records of the Employer's customers are stored, but Northborough also functions as the transportation hub for the entire Boston District. That is, except in exceptional circumstances, any records being picked up from a customer are first brought to Northborough before being delivered to any of the other Boston District record centers for storage. Similarly, any records that are to be returned to a customer from the other Boston District record centers are routed through Northborough.

There are 33 couriers, or drivers, who operate from Northborough and one who operates from Franklin. There is one assistant courier (whose job is to assist the courier with respect to large loads) at Northborough. The Employer's record center specialists are warehouse employees who file and retrieve records at the record centers. There are 32 of them at Northborough and six at Franklin. There are six record center coordinators at Northborough and one at Franklin. There are three transportation coordinators at Northborough, and none at Franklin. The job duties of the record center coordinators and transportation coordinators will be discussed below.

The day-to-day management and supervision of Northborough and Franklin are separate and distinct. Each has its own operations managers and supervisory staff. Franklin operates on only one shift, which is during the day. Northborough operates on a 24-hour basis over three shifts. At Franklin, there is one operations manager, who also has responsibility for two other buildings/locations,⁵ and one record center supervisor. At Northborough, there are two operations managers, a transportation manager, and multiple record center supervisors.⁶ Not all of the other locations in the Boston District have

⁴ Of these 11 other facilities, only the Billerica, Massachusetts and Portland, Maine locations are specifically identified in the record.

⁵ Although the Employer states in its post-hearing brief that these two locations are Braintree and Deighton, this fact is not in the record.

⁶ The record does not otherwise identify these officials. Although there is no stipulation as to their supervisory status, neither party disputes that the operations managers, record center supervisors, and transportation manager are excluded from the units found appropriate.

operations managers, as there are a total of only five operations managers in the district. There are two human resource administrators, located at Billerica, who oversee all of the Boston District locations.

There appears to be no permanent transfer of employees between Northborough and Franklin. Normally, a need for greater than normal staffing is met through the use of temporary employees who are on the payroll of a labor supplier or, in the case of deliveries, through the use of outside delivery services. There have been, however, occasions on which a record center specialist from Northborough has worked for brief periods at Franklin. The record does not indicate that such temporary transfers occur with any regularity. A Northborough courier makes a daily run to Franklin but the record does not disclose which Franklin employees he may come in contact with. The relationship of Franklin to Northborough is identical to that between Northborough and the other 11 record centers of the Boston District. The Franklin facility is about 30 miles from Northborough. The Boston District record center in Billerica is approximately the same distance from Northborough.⁷ There is a history of collective bargaining for the Franklin location as part of a multi-location unit with the Employer's Boston facility but no history of bargaining for the Northborough location.⁸

The record center coordinators spend about half their time performing the same filing and retrieving duties as the record center specialists. The remaining duties of the record center coordinators are not fully described in the record, but the following matters were raised with respect to the issue of their supervisory status. The Employer normally fills record center specialist positions from among persons who are currently working in this capacity as temporary employees on the payroll of labor suppliers. The only witness at the hearing, Steve Pescia, the general manager of the Boston District, conceded that supervisors regularly consult the record center coordinators for what he only described as "feedback" concerning such temporary employees who were being considered for hire as record center specialists. But he emphasized that the supervisors are in a position to observe the work of these employees and reach their own conclusions as to their desirability for permanent employment. It is also the case that supervisors regularly consult with the record center coordinator about the performance of the record center

⁷The distance between Northborough and the other 10 record centers does not appear in the record.

⁸ I take judicial notice that Teamsters Local Union No. 25 was certified on December 2, 1996 and later decertified on March 2, 1998 as representative of the following unit:

All full time and regular part time records center specialists, truck drivers, truck helpers, couriers, data entry clerks, order entry clerks, expeditors, order entry team leader, data entry coordinator, dispatchers, accession coordinator and data base coordinators employed by the Employer at its Boston and Franklin, Massachusetts facilities, but excluding office clerical employees, managerial employees, contract administrator, accounts receivable clerk, sales employees, temporary employees, confidential employees, maintenance employees, guards, and supervisors as defined in the Act.

specialists when preparing their annual appraisals. Pescia testified, however, that he was unaware that a record center coordinator had ever caused a supervisor to alter the evaluation he would otherwise have given based on their own observations.

“Pick tickets” showing what customer records are to be retrieved and where they are located are generated by the Employer’s computer system. The record center coordinators then assign these tickets to the record center specialists to make the retrieval. Petitioner did not challenge Pescia’s assertion that the making of these assignments is a completely routine process. The record center coordinators are hourly rated⁹ and are required to wear uniforms as are the employees petitioned for. The supervisors to whom the record center coordinators report are not required to wear uniforms and are salaried.

Although sharing the same job title, the three transportation coordinators at Northborough do not, in fact, perform the same work. Transportation coordinator Jean Calhoun’s sole function is to monitor the Employer’s computer software program, which generates a plan for the day’s pick ups and deliveries from Northborough, to correct the plan when it has made assignments which would require a driver to make too many deliveries or to carry too great a load. Petitioner did not challenge Pescia’s characterization that once one had become familiar with the software program Calhoun’s function was “a relatively easy” one.

Transportation coordinator Anthony Cusamano is responsible for satisfying customer requests that require same-day service and, therefore, cannot be planned for in normal course. This involves determining which of the Employer’s couriers is available and able to perform the service or whether an outside delivery company must be used.

Transportation coordinator John Boyle spends approximately two-thirds of his time assisting other employees in loading and unloading records and one-third of his time performing courier work. Boyle performs the same function with respect to the hiring of record center specialists and their annual evaluation as the record center coordinators. Cusamano only performs a similar function with respect to the annual evaluations of couriers.

The Unit-Scope Issue:

With respect to the issue of unit scope, I find that the two-location unit sought by the Petitioner is not appropriate. “[T]he Board has consistently refused to set apart as an appropriate unit any subdivision or group of employees the nature of whose work is indistinguishable from that of other employees or whose work is not functionally coherent and distinct,” Triangle Publications, Inc., 40 NLRB 1330, 1332 (1942). Requested units must be composed of a well-defined group of employees entitled to separate representation. Moore Business Forms, Inc., 204 NLRB 552, 553 (1973). In

⁹ They are on a different pay scale than the other unit employees but the record does not otherwise indicate the differences.

addition, when applying these principles to requested units composed of more than one location but on less than an employer-wide basis, the resulting unit must be “coherent and sensible for collective bargaining from the standpoint of geographic considerations or the employer’s administrative or operational structure,” Farmers Insurance Group, 187 NLRB 844, 847 (1971). See also, Bashas’, Inc., 337 NLRB 710 (2002).

It would be wholly arbitrary and inconsistent with the above principles to combine the Northborough employees in the classifications under consideration with those at Franklin in light of the fact that these employees are not to any significant degree integrated with each other, the two facilities are separately managed on a day-to-day basis, and the relationship of the Franklin facility does not differ in any substantial way from the other Boston District record centers in its relationship to the Northborough facility.

Since the Employer has not attempted to rebut the presumption that a single-location unit is appropriate, RB Associates, 324 NLRB 874, 877 (1997), and the Petitioner is willing to proceed to an election in separate Northborough and Franklin units, I shall direct an election in a separate unit for each location.

The Supervisory Issues:

I find that the record center coordinators and the transportation coordinators are not supervisors within the meaning of Section 2(11) of the Act and that, therefore, pursuant to the agreement of the parties, they are properly included in the appropriate unit description.

To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985). Consistent with the statutory language and the legislative intent, however, it is well recognized that the disjunctive listing of supervisory indicia in Section 2(11) does not alter the requirement that a supervisor must exercise independent judgment in performing the enumerated functions. Thus, the exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an employee into the supervisory ranks, the test of which must be the significance of the judgment and directions. Opelika Foundry, 281 NLRB 897, 899 (1986). The burden of proving supervisory status rests on the party alleging that such status exists. Tucson Gas & Electric Co., 241 NLRB 181 (1979). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co., 308 NLRB 101, 102 (1992).

While the record indicates that the record center coordinators and one of the transportation coordinators participate in the evaluation of candidates for hire as record center specialists, there is no evidence that they have effectively recommended the hire of

such candidates. “Mere participation in the hiring process, absent authority to effectively recommend hire, is insufficient to establish Section 2(11) supervisory authority,” North General Hospital, 314 NLRB 14, 16 (1994). Similarly, although the record center coordinators and two of the transportation coordinators participate in the annual job performance appraisal process, there was no showing that their contribution to the evaluation process has any direct effect on the evaluated employees’ wages, status or tenure. Authority to “evaluate” is not itself one of the indicia of supervisory status set out in Section 2(11) of the Act and, accordingly, the Board requires that evaluations must be shown to have an impact on employees’ wages or job status before supervisory status may be predicated thereon. Williamette Industries, 336 NLRB 743 (2001).

While the basic function of both Calhoun and Cusamano may be characterized as making or affecting work assignments, the record indicates only that the decisions which must be made in the exercise of these functions are routine in nature and do not involve the use of independent judgment. See, Carry Cos. of Illinois, 311 NLRB 1058, 1064 (1993).

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find the following two units to be appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

Unit 1(Northborough):

All full-time and regular part-time CDL and non-CDL couriers, assistant couriers, record center specialists, record center coordinators, and transportation coordinators employed by the Employer at its 175 Bearfoot Road, Northborough, Massachusetts facility, but excluding data entry employees, maintenance employees, customer service employees, office clerical employees, confidential employees, management employees, guards, and supervisors as defined in the Act.

Unit 2 (Franklin):

All full-time and regular part-time CDL and non-CDL couriers, record center specialists, and record center coordinators employed by the Employer at its 1 Old Forge Hill Road, Franklin, Massachusetts facility, but excluding data entry employees, maintenance employees, customer service employees, office clerical employees, confidential employees, management employees, guards, and supervisors as defined in the Act.¹⁰

¹⁰ There are 75 employees in the Northborough unit and 8 in the Franklin unit.

DIRECTION OF ELECTION

Elections by secret ballot shall be conducted by the Regional Director among the employees in the units found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Truck Drivers Union Local #170, a/w International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters in both units, shall be filed by the Employer with the Regional Director, who shall make the lists available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such lists must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before February 11, 2005. No extension of time to file these lists may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by February 18, 2005.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street - Room 601
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 4th day of February, 2005.

h:\r01com\decision\1-rc-21860 iron mountain (revised)(dcf lfs).doc